Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

23 April 2026*

(Appeal – State aid – Article 107(3)(b) TFEU – German air transport market – Aid granted by Germany to an airline in the context of the COVID-19 pandemic – Temporary Framework for State aid measures – Recapitalisation of Deutsche Lufthansa AG – Decision by the Commission not to raise any objections – Aid intended to remedy a serious disturbance in the economy)

In Case C-457/23 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 July 2023,

Deutsche Lufthansa AG, established in Cologne (Germany), represented initially by J. Burger, H.-J. Niemeyer, C. Sielmann, and C. Wilken, Rechtsanwälte, subsequently by P. Heuser, H.-J. Niemeyer, C. Sielmann and M. Wilken, Rechtsanwälte,

appellant,

the other parties to the proceedings being:

Ryanair DAC, established in Swords (Ireland), represented initially by F.-C. Laprévote and E. Vahida, avocats, D. Pérez de Lamo and S. Rating, abogados, subsequently by F.-C. Laprévote and E. Vahida, avocats, and S. Rating, abogado,

Condor Flugdienst GmbH, established in Neu-Isenburg (Germany), represented initially by A. Israel and J. Lang, Rechtsanwälte, G.J. Dietrich, Barrister, and E. Wright, avocate, subsequently by A. Israel and J. Lang, Rechtsanwälte, G.J. Dietrich, Barrister, subsequently by A. Israel and J. Lang, Rechtsanwälte, T. Peevska, avocate, and lastly by A. Israel and J. Lang, Rechtsanwälte, and M. Álvarez-Requejo Heredero, abogada,

applicants at first instance,

European Commission, represented by L. Flynn, J. Carpi Badía and F. Tomat, acting as Agents,

defendant at first instance,

Federal Republic of Germany, represented initially by J. Möller and P.-L. Krüger, and subsequently by J. Möller, acting as Agents,

French Republic,

* Language of the case: English.

interveners at first instance,

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, S. Rodin (Rapporteur), N. Piçarra and N. Fenger, Judges,

Advocate General: A. Biondi,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 7 May 2025,

after hearing the Opinion of the Advocate General at the sitting on 16 October 2025,

gives the following

Judgment

1 By its appeal, Deutsche Lufthansa AG ('DLH') seeks to have set aside the judgment of the General Court of the European Union of 10 May 2023, *Ryanair and Condor Flugdienst* v *Commission (Lufthansa; COVID-19)* (T-34/21 and T-87/21, 'the judgment under appeal', EU:T:2023:248), by which the General Court annulled Commission Decision C(2020) 4372 final of 25 June 2020 concerning State Aid SA 57153 (2020/N) – Germany – COVID-19 – Aid to Lufthansa, as rectified by Commission Decision C(2021) 9606 final of 14 December 2021 ('the decision at issue').

Legal context

Regulation (EEC) No 95/93

2 Article 2 of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ 1993 L 14, p. 1), as amended by Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 (OJ 2004 L 138, p. 50), provides:

'For the purpose of this Regulation:

(a) "slot" shall mean the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation;

…'

The Temporary Framework

3 The Communication from the European Commission on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020/C-91 1/01, OJ 2020 C 91 I, p. 1) was published on 20 March 2020 in the *Official Journal of the European Union* and has been amended seven times. Points 44, 49, 51, 54, 59, 60 to 63, 67 to 70 and 72 of that communication, as amended by the Communication from the Commission of 8 May 2020 (2020/C-164/03, OJ 2020 C 164, p. 3) ('the Temporary Framework'), provided:

'3.11. Recapitalisation measures

44. This Temporary Framework sets out the criteria under EU State aid rules, based on which Member States may provide public support in the form of equity and/or hybrid capital instruments to undertakings facing financial difficulties due to the COVID-19 outbreak … It aims at ensuring that the disruption of the economy does not result in the unnecessary exit from the market of undertakings that were viable before the COVID-19 outbreak. Recapitalisations must therefore not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak. Large undertakings must report on how the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

…

3.11.2. Eligibility and entry conditions

49. The COVID-19 recapitalisation measure must fulfil the following conditions:
  (a) without the State intervention the beneficiary would go out of business or would face serious difficulties to maintain its operations. Such difficulties may be shown by the deterioration of, in particular, the beneficiary's debt to equity ratio or similar indicators;

…

  (c) the beneficiary is not able to find financing on the markets at affordable terms and the horizontal measures existing in the Member State concerned to cover liquidity needs are insufficient to ensure its viability; …

…

51. The requirements of this section and sections 3.11.4, 3.11.5, 3.11.6 and 3.11.7 apply to both COVID-19 recapitalisation schemes and individual aid measures. When approving a scheme, the Commission will request the separate notification of individual aid above the threshold of EUR 250 million. In relation to such notifications the Commission will assess whether existing financing in the market or horizontal measures to cover liquidity needs are insufficient to ensure the viability of the beneficiary; that the selected recapitalisation instruments and the conditions attached to them are appropriate to address the beneficiary's serious difficulties; that the aid is proportionate; and that the conditions in this section and sections 3.11.4, 3.11.5, 3.11.6 and 3.11.7 are complied with.

…

3.11.4. Amount of the recapitalisation

54. In order to ensure proportionality of the aid, the amount of the COVID-19 recapitalisation must not exceed the minimum needed to ensure the viability of the beneficiary, and should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak, i.e. the situation on 31 December 2019. In assessing the proportionality of the aid, State aid received or planned in the context of the COVID-19 outbreak shall be taken into account.

…

3.11.5. Remuneration and exit of the State

General principles

…

59. As an alternative to the remuneration methodologies set out below, Member States may notify schemes or individual measures where the remuneration methodology is adapted in accordance with the features and seniority of the capital instrument provided they overall lead to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration.

Remuneration of equity instruments

60. A capital injection by the State, or an equivalent intervention, shall be conducted at a price that does not exceed the average share price of the beneficiary over the 15 days preceding the request for the capital injection. If the beneficiary is not a publicly listed company, an estimate of its market value should be established by an independent expert or by other proportionate means.

61. Any recapitalisation measure shall include a step-up mechanism increasing the remuneration of the State, to incentivise the beneficiary to buy back the State capital injections This increase in remuneration can take the form of additional shares … granted to the State or other mechanisms, and should correspond to a minimum of 10% increase in the remuneration of the State (for the participation resulting from the State's COVID-19 equity injection that has not been repaid), for each of the step-up steps:
   (a) Four years after the COVID-19 equity injection, if the State has not sold at least 40 percent of its equity participation resulting from the COVID-19 equity injection, the step-up mechanism will be activated.
   (b) Six years after the COVID-19 equity injection, if the State has not sold in full its equity participation resulting from the State's COVID-19 equity injection, the step-up mechanism will again be activated …

   If the beneficiary is not a publicly listed company, Member States may decide to implement each of the two steps one year later, i.e. five years and seven years after granting of the COVID-19 equity injection, respectively.

62. The Commission may accept alternative mechanisms, provided they lead overall to a similar outcome with regard to the incentive effects on the exit of the State and have a similar impact overall on the State's remuneration.

63. The beneficiary should, have at any time, the possibility to buy back the equity stake that the State has acquired. To ensure that the State receives appropriate remuneration for the investment, the buy-back price should be the higher amount of (i) the nominal investment by the State increased by an annual interest remuneration 200 basis points higher than presented in the table below … or (ii) the market price at the moment of the buy-back.

…

Remuneration of hybrid capital instruments

…

67. The conversion of hybrid capital instruments into equity shall be conducted at 5 percent or more below TERP (Theoretical Ex-Rights Price) at the time of the conversion.

68. After conversion into equity, a step-up mechanism must be included to increase the remuneration of the State, to incentivise the beneficiaries to buy back the State capital injections. If the equity resulting from the State's COVID-19 intervention is still owned by the State two years after the conversion into equity the State shall receive an additional share of ownership of the beneficiary in addition to its remaining participation resulting from the State's conversion of the COVID-19 hybrid capital instruments. This additional share of ownership shall be at a minimum 10 percent of the remaining participation resulting from the State's conversion of the COVID-19 hybrid capital instruments. The Commission may accept alternative step-up mechanisms provided they have the same incentive effect and a similar overall impact on the State's remuneration.

69. Member States may choose a pricing formula that includes additional step-up or payback clauses. Such features should be designed so that they encourage an early end to the State's recapitalisation support of the beneficiary. The Commission may also accept alternative pricing methodologies, provided they lead to remunerations that are higher than or similar to those resulting from the above methodology.

70. Since the nature of hybrid instruments varies significantly, the Commission does not provide guidance for all types of instruments. Hybrid instruments shall in any event follow the principles mentioned above, with remuneration reflecting the risk of the particular instruments.

…

72. If the beneficiary of a COVID-19 recapitalisation measure above EUR 250 million is an undertaking with significant market power on at least one of the relevant markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets. …'

The background to the dispute and the decision at issue

4 The background to the dispute, as set out in the judgment under appeal, may be summarised as follows.

5 DLH is the parent company of the Lufthansa Group, which, inter alia, comprises the airlines Lufthansa Passenger Airlines, Brussels Airlines SA/NV, Austrian Airlines AG, Swiss International Air Lines Ltd and Edelweiss Air AG.

6 On 12 June 2020, the Federal Republic of Germany, in accordance with Article 108(3) TFEU, notified the European Commission of a planned individual aid measure in the form of a recapitalisation of EUR 6 billion for DLH ('the measure at issue').

7 Based on Article 107(3)(b) TFEU and the Temporary Framework, The measure at issue was intended to restore the balance sheet position and liquidity of the undertakings in the Lufthansa Group in the exceptional situation caused by the COVID-19 pandemic. The aid was financed and managed for the German Government by the Wirtschaftsstabilisierungsfonds (Economic Stabilisation Fund, Germany), a public entity that provided financial support at short notice to German companies affected by the COVID-19 pandemic.

8 The measure at issue consisted of the following three elements:

– an equity participation of EUR 306 044 326.40 ('the equity participation');

– a 'silent participation' of EUR 4 693 955 673.60, which was a hybrid capital instrument, treated as equity under international accounting standards ('Silent Participation I'); and

– a 'silent participation' of EUR 1 billion with the features of a convertible debt instrument ('Silent Participation II').

9 The measure at issue was part of a wider series of support measures for the Lufthansa Group, which may be summarised, at the time the decision at issue was adopted, as follows:

– a State guarantee of 80% on a loan of EUR 3 billion which the Federal Republic of Germany intended to grant to DLH under an aid scheme already approved by the Commission (Commission Decision C(2020) 1886 final of 22 March 2020 on State Aid SA.56714 (2020/N) – Germany – COVID-19 measures);

– a State guarantee of 90% on a loan of EUR 300 million which the Republic of Austria intended to grant to Austrian Airlines under an aid scheme already approved by the Commission (Commission Decision C(2020) 2354 final of 8 April 2020 on State aid SA.56840 (2020/N) – Austria – COVID-19: Austrian liquidity assistance scheme);

– a loan of EUR 150 million, which the Republic of Austria planned to grant to Austrian Airlines to compensate it for the damage resulting from the cancellation or rescheduling of its flights in the context of the COVID-19 pandemic;

– EUR 250 million in liquidity support and a loan of EUR 40 million which the Kingdom of Belgium planned to grant to Brussels Airlines; and

– a State guarantee of 85% on a loan of EUR 1.4 billion granted by the Swiss Confederation to Swiss International Air Lines and Edelweiss Air.

10 On 25 June 2020, the Commission adopted the decision at issue, by which, after finding that the measure at issue constituted 'State aid' within the meaning of Article 107(1) TFEU and assessing its compatibility with the internal market in the light of the Temporary Framework, it decided that that measure was compatible with the internal market under Article 107(3)(b) TFEU and therefore it did not raise any objections to it.

The procedure before the General Court and the judgment under appeal

11 By applications lodged at the Registry of the General Court on 22 January and 12 February 2021 respectively, Ryanair DAC ('Ryanair') and Condor Flugdienst GmbH ('Condor') brought actions for annulment of the decision at issue.

12 In support of its action in Case T-34/21, Ryanair raised five pleas in law alleging, first, misapplication of the Temporary Framework and misuse of powers; second, misapplication of Article 107(3)(b) TFEU; third, infringement of certain provisions of the FEU Treaty and of general principles of EU law; fourth, failure by the Commission to initiate the formal investigation procedure provided for in Article 108(2) TFEU; and, fifth, infringement of the obligation to state reasons.

13 In support of its action in Case T-87/21, Condor raised three pleas in law alleging, first, failure by the Commission to fulfil its obligation to initiate the formal investigation procedure provided for in Article 108(2) TFEU; second, a manifest error of assessment in that the Commission found that the measure at issue was compatible with the internal market under Article 107(3)(b) TFEU; and, third, infringement of the obligation to state reasons.

14 As a preliminary matter, the General Court, in paragraphs 15 to 67 of the judgment under appeal, found that the actions brought by Ryanair and Condor were admissible, considering, first, that they were interested parties with a legal interest in safeguarding the procedural rights which they derived from Article 108(2) TFEU, and, second, that they had demonstrated that they were directly and individually concerned by the decision at issue, within the meaning of the fourth paragraph of Article 263 TFEU, which enabled them to challenge that decision on the merits.

15 Next, when assessing the actions on the merits in paragraphs 68 to 503 of the judgment under appeal, the General Court, in the first place, proceeded in paragraphs 70 and 71 thereof to group together the pleas in law made in support of the actions. In particular, it found that all of the questions raised by the first plea in the action in Case T-34/21 and the first and second pleas in the action in Case T-87/21 could be grouped into six issues, concerning, (i), DLH's eligibility for State aid, (ii), whether there were other measures that were more appropriate and that created fewer distortions to competition, (iii), the amount of the aid, (iv), the remuneration and exit of the State, (v), the prohibition of commercial expansion financed by the measure at issue and, (vi), whether the beneficiary held significant market power ('SMP') on the markets at issue and the structural commitments.

16 In the second place, in paragraphs 73 to 87 of the judgment under appeal, the General Court made preliminary observations, first, on the intensity of the review which the EU Courts conduct in respect of the complex economic assessments carried out by the Commission in the field of State aid when it assesses the compatibility of aid measures with the internal market under Article 107(3) TFEU and, second, on the probative value of the expert reports on which Ryanair relied in the action in Case T-34/21.

17 In the third place, the General Court held, when assessing in paragraphs 88 to 503 of the judgment under appeal the pleas and issues referred to in paragraph 15 above, that the decision at issue was vitiated by errors of law as regards:

– the eligibility of the beneficiary concerned for the aid at issue under point 49(c) of the Temporary Framework, as referred to in the first part of the first plea in Case T-34/21 and the second part of the first plea in Case T-87/21 (paragraphs 112 to 138 of the judgment under appeal);

– the absence of a step-up mechanism to increase the remuneration of the State or a similar mechanism under points 61, 62, 68 and 70 of the Temporary Framework, as referred to in the fourth part of the first plea in Case T-34/21 (paragraphs 242 to 271 of the judgment under appeal);

– the price of the shares at the time of conversion of Silent Participation II, under point 67 of the Temporary Framework, covered by the fourth part of the first plea in Case T-34/21 (paragraphs 272 to 288 of the judgment under appeal);

– the existence of SMP at the airports where DLH has a base ('relevant airports'), other than at Frankfurt (Germany) and Munich (Germany) airports, and, in any event, at Düsseldorf (Germany) and Vienna (Austria) airports, during the IATA 2019 summer season, referred to in the fifth part of the first plea in Case T-34/21 and the first part of the first plea in Case T-87/21 (paragraphs 373 to 412 of the judgment under appeal);

– aspects of the commitments referred to in the fifth part of the first plea in Case T-34/21 and the first part of the first plea in Case T-87/21 (paragraphs 467 to 480 and 494 to 502 of the judgment under appeal).

18 Consequently, the General Court, after finding in paragraph 505 of the judgment under appeal that each of those errors was, in itself, capable of justifying the annulment of the decision at issue, annulled that decision, without examining the other pleas and complaints put forward by the appellants.

Forms of order sought by the parties to the appeal

19 By its appeal, DLH claims that the Court of Justice should:

– set aside the judgment under appeal;

– dismiss the actions at first instance; and

– order Ryanair and Condor to pay the costs, both at first instance and on appeal.

20 Ryanair and Condor contend that the Court should:

– dismiss the appeal; and

– order the appellant to pay the costs.

21 The Commission contends that the Court should:

– set aside the judgment under appeal; and

– order Ryanair and Condor to pay the costs, both at first instance and on appeal.

22 The Federal Republic of Germany contends that the Court should:

– set aside the judgment under appeal;

– order Ryanair and Condor to pay the costs relating to the appeal proceedings; and

– order Ryanair to pay the costs relating to the proceedings at first instance in Case T-34/21.

The appeal

23 DLH puts forward six grounds in support of its appeal. The first alleges an error of law, distortion of the facts and breach by the General Court of the limits of its judicial review, in that it held wrongly that the Commission had infringed point 49(c) of the Temporary Framework. The second ground of appeal alleges that the General Court erred in law in finding that the Commission had infringed points 62 and 68 of the Temporary Framework by failing to require that the equity participation and Silent Participation II be accompanied by a step-up mechanism for increasing the remuneration of the State or a similar mechanism. The third ground of appeal alleges that the General Court erred in law in finding that the Commission had infringed point 67 of the Temporary Framework. The fourth ground of appeal alleges that the General Court vitiated its judgment by errors of law and overstepped the limits of its judicial review by holding that the Commission had not correctly assessed whether DLH had SMP at the relevant airports. The fifth ground of appeal alleges that the General Court erred in law in finding that the Commission had vitiated its decision by a manifest error of assessment by excluding existing competitors already based at Frankfurt and Munich airports from the first stage of the procedure for the divestiture of slots that were to be released. The sixth ground of appeal alleges that the General Court erred in law in holding that the Commission had infringed its obligation to state reasons by failing to explain why the divestiture of slots held by DLH had to be carried out in return for remuneration and did not affect the attractiveness of the slot commitments.

The first ground of appeal

Arguments of the parties

24 By its first ground of appeal, which is divided into three parts, DLH complains that the General Court, in paragraphs 112 to 138 of the judgment under appeal, erred in law, distorted the facts and disregarded the limits of its judicial review by holding that the Commission had infringed point 49(c) of the Temporary Framework when it had held that DLH was unable to find financing on the markets at affordable terms and in failing to take into account all the relevant evidence in that regard.

25 By the first part of the first ground of appeal, DLH submits that by finding, in paragraph 125 of the judgment under appeal, that paragraph 22 of the decision at issue was based ‘on a false premiss, that the financing that can be obtained on the markets must necessarily cover all the beneficiary’s needs’, the General Court distorted the Commission’s arguments. It is not possible to conclude, merely from reading the wording used in that paragraph, that the Commission had considered that financing on private markets had necessarily always to cover all the beneficiary’s needs.

26 By the second part of the first ground of appeal, DLH complains that the General Court erred in law in finding, in paragraph 125 et seq. of the judgment under appeal, that the Commission was required to assess, at the stage of analysing eligibility under point 49(c) of the Temporary Framework, whether a non-negligible part of a beneficiary’s funding needs could be met by financing from the markets.

27 First, such an interpretation is contradicted by the broad and open wording of point 49(c) of the Temporary Framework.

28 Second, it is apparent from that wording that the legal test to be applied is whether a beneficiary is not able to find financing on the markets at affordable terms and whether the national measures to cover its liquidity needs are insufficient to ensure its viability. Accordingly, it would be possible to take into consideration the entirety of the needs for liquidity expressed by the beneficiary.

29 Third, in paragraph 129 of the judgment under appeal, the General Court disregarded the purpose of point 49(c) of the Temporary Framework, namely to prevent the excessive use of public resources, and erred, in paragraph 130 of the judgment under appeal, by transposing the principle of the minimum necessary, appropriate for reviewing the proportionality of the measure, to the eligibility stage. Furthermore, the General Court contradicted itself with its own findings by rejecting, in paragraphs 150 to 217 of the judgment under appeal, all the arguments made by the applicants at first instance about the amount of the aid and by holding, in paragraphs 208 and 217 thereof, that the total amount of EUR 6 billion was limited to the minimum needed to ensure the viability of the beneficiary. Lastly, the General Court’s interpretation of point 49(c) of the Temporary Framework also conflicts with its own case-law in other cases and thus infringes the principle of equal treatment.

30 By the third part of the first ground of appeal, DLH complains, first, that the General Court erred in law and exceeded the limits of its judicial review by finding, in paragraphs 117 and 131 to 135 of the judgment under appeal, that the Commission had not taken into account all the evidence required for the purpose of examining the condition laid down in point 49(c) of the Temporary Framework. Second, in paragraph 120 of the judgment under appeal, the General Court distorted the decision at issue, the Commission’s defence and DLH’s intervention by stating that the Commission and DLH had not disputed the accuracy and reliability of the data produced by Ryanair’s expert, Oxera, in its first report, entitled ‘Assessment of the Commission’s analysis of the proportionality of the aid to DLH’ of 21 January 2021.

31 The Federal Republic of Germany and the Commission in essence support the arguments put forward by DLH in its first ground of appeal and argue that that ground should be upheld.

32 Ryanair and Condor dispute those arguments and submit that the first ground of appeal should be rejected as inadmissible, at least in part, with respect to the third part thereof, and, in Ryanair’s view, also with respect to the first part. In any event, according to those parties, that ground must

be rejected as unfounded. They contend, in essence, that the findings of the judgment under appeal referred to in the present ground of appeal should be upheld since the General Court, in particular, did not exceed the limits of its judicial review.

Findings of the Court

33 As a preliminary matter, it should be observed that point 49(c) of the Temporary Framework makes eligibility for a recapitalisation measure subject to the condition, first, that the beneficiary of a recapitalisation measure is not able to find financing on the markets at affordable terms and, second, that the horizontal measures existing in the Member State concerned to cover the liquidity needs of that beneficiary are insufficient to ensure its viability.

34 It is apparent from reading paragraphs 125 to 132 of the judgment under appeal as a whole that the General Court interpreted point 49(c) as meaning that, in order to determine whether a beneficiary satisfies that condition, the Commission must examine whether it may finance a non-negligible part of its needs on the markets or on the basis of those horizontal measures.

35 In support of that reasoning, the General Court observed, first, in paragraph 129 of the judgment under appeal, that the purpose of point 49(c) of the Temporary Framework was to limit State intervention solely to those cases where the beneficiary is unable to obtain financing on the financial markets at affordable terms and, second, in paragraph 130 of that judgment, that that provision had to be interpreted in the light of the principle of proportionality. As a result, according to the General Court, the Commission is required to assess whether the beneficiary may raise a non-negligible part of the necessary financing on the markets.

36 In that regard, first, it is apparent from a literal interpretation of point 49(c) of the Temporary Framework as a whole that it aims to exclude from the scope of the beneficiaries of a recapitalisation measure those undertakings which could, without such a measure, in fact obtain sufficient financing on the markets or through the horizontal measures existing in the Member State concerned.

37 Second, it should be observed that point 49(c) is included in section 3.11.2 of the Temporary Framework, relating to eligibility and entry conditions. The condition referred to in paragraph 33 above thus appears among other conditions, such as the one referred to in point 49(a) of the Temporary Framework, which states that, without the State intervention, the beneficiary would go out of business or face serious difficulties to maintain its operations. Accordingly, it must be held that the condition in point 49(c) of the Temporary Framework relates to a need for financing that is intended to ensure the viability of the undertaking, which cannot be satisfied at affordable terms on the markets or by national horizontal measures.

38 That interpretation is supported by the third sentence of point 51 of the Temporary Framework, which, although concerning only notification by Member States of individual aid above the threshold of EUR 250 000 000, reproduces and makes explicit the condition in point 49(c) of the Temporary Framework by stating that the existing financing of the beneficiary of the aid or the horizontal measures to cover its liquidity needs should be insufficient to ensure its viability.

39 Third, it is apparent from point 54 of the Temporary Framework, included in sub-section 3.11.4 thereof, entitled 'Amount of the recapitalisation', that, in order to ensure that aid complies with the principle of proportionality, the amount of the measure must not exceed the minimum needed to ensure the viability of the beneficiary. However, the assessment of a beneficiary's

eligibility, in the light of the conditions laid down in point 49 of the Temporary Framework, must be distinguished from the review of the proportionality of the amount of the aid under point 54. Moreover, point 51 of the framework explicitly distinguishes, first, between the eligibility condition that the existing financing of the beneficiary of the aid or horizontal measures to cover its liquidity needs should be insufficient to ensure its viability, and, second, the requirement that the aid must be proportionate.

40 It thus follows from a literal and contextual interpretation of point 49(c) of the Temporary Framework that the latter must be interpreted as meaning that an undertaking's eligibility for a recapitalisation measure is conditional on the existence of a need for financing, while it is not necessary, at that stage of its assessment, for the Commission to review the exact amount of the financing to be provided by such a measure nor, therefore, to determine whether the beneficiary is able to call on the markets or horizontal measures to cover a negligible or non-negligible part of its financing needs.

41 While the General Court was correct in finding that the purpose of point 49(c) of the Temporary Framework is to limit the provision of recapitalisation measures solely to undertakings with an unsatisfied need for financing, the considerations in paragraphs 129 and 130 of the judgment under appeal, according to which that purpose would be undermined if public resources were employed to fund needs that may be financed in part on the markets, are part of the assessment of the amount of the aid and not of the eligibility of the beneficiary for that aid. The same is true of the considerations relating to the principle of proportionality.

42 It thus follows that the General Court erred in law by finding, in paragraphs 132 and 137 of the judgment under appeal, that the Commission, since it had not assessed whether the beneficiary could have raised at least part of the necessary financing on the markets, had failed to take into account all of the relevant evidence for the purpose of examining the condition in point 49(c) of the Temporary Framework.

43 Furthermore, although the General Court found, in paragraphs 123 and 124 of the judgment under appeal, that the Commission had failed to assess whether DLH had collateral that enabled it to obtain financing on the markets that met its needs, it is apparent from the findings of fact in paragraph 119 of the judgment under appeal that DLH could, in any event, have raised only EUR 1 to 3.7 billion on the markets, using its aircraft and spare parts as collateral, to meet liquidity needs that were estimated, as per paragraph 115 of the judgment under appeal, at nearly EUR 9 billion in the decision at issue. In those circumstances, the fact that the Commission did not examine whether DLH had collateral enabling it to obtain financing on the markets has no bearing on the assessment of the beneficiary's eligibility under point 49(c) of the Temporary Framework in the present case.

44 It follows from the foregoing that the second part of the first ground of appeal is well founded. Accordingly, that ground of appeal must be upheld, there being no need to examine its other parts or, therefore, the related admissibility questions.

The second ground of appeal

Arguments of the parties

45 By its second ground of appeal, which has two parts, DLH submits that the General Court erred in law in finding, in paragraphs 242 to 271 of the judgment under appeal, that the Commission, inter alia, had infringed points 61, 62, 68 and 70 of the Temporary Framework by failing to require that the equity participation and Silent Participation II be accompanied by a step-up mechanism increasing the remuneration of the State or a mechanism that was similar.

46 By the first part of the second ground of appeal, DLH submits that, contrary to the General Court's findings in paragraphs 252 to 263 of the judgment under appeal, the Commission was entitled to find that the equity participation, considering the overall structure of the recapitalisation measures and their tightly interconnected components, was accompanied by a mechanism that was similar to that of the step-up to increase the remuneration of the State.

47 First, the approach followed by the General Court in that regard, with respect to interpreting point 62 of the Temporary Framework, was erroneous and formalistic, in that it found, inter alia, in paragraph 263 of the judgment under appeal, that the Commission could not take into account the combined effects of the recapitalisation measures on the incentive effects on the exit of the State from DLH's capital. That interpretation contradicts point 59 of the Temporary Framework, which specifically allows 'alternative[s] to the remuneration methodologies set out below'. By adopting such an interpretation, the General Court disregarded the broad discretion enjoyed by the Commission in complex economic assessments and overstepped the limits of its judicial review.

48 Second, DLH submits that the General Court erred in finding, in paragraphs 254 to 256 of the judgment under appeal, that the substantial discount at which the State had entered DLH's equity did not have a sufficiently close connection with the subject matter of a step-up mechanism to increase the State's remuneration or with the purpose of that mechanism. The General Court, inter alia, erred in law in finding, in paragraph 255 of the judgment under appeal, that the additional shareholding acquired by the State in that company and the corresponding remuneration could not be taken into consideration merely because the initial purchase price was governed by point 60 of the Temporary Framework. In addition, the General Court distorted the purpose of points 60, 61 and 62 of the Temporary Framework by finding, in paragraph 256 of the judgment under appeal, that other step-up mechanisms to increase the State's remuneration must also always include remuneration that is intended to increase over time and an *ex-post* incentive effect for a timely exit of the State. DLH adds that a step-up mechanism to increase the remuneration of the State, as provided for in point 61 of the Temporary Framework, could not have been applied to the equity participation as such. Furthermore, according to DLH, the General Court erred in law when it found, in paragraph 260 of the judgment under appeal, that the Commission was not entitled to take into consideration the increasing rates of interest for Silent Participations I and II in its assessment under point 62 of the Temporary Framework. Lastly, the General Court erred in law when it found in similar fashion that the behavioural commitments provided for in sub-section 3.11.6 of the Temporary Framework could not be taken into account in the assessment under point 62 of the Temporary Framework.

49 By the second part of the second ground of appeal, DLH submits that the General Court erred in law in finding, in paragraph 265 et seq. of the judgment under appeal, that Silent Participation II, after its conversion into equity, was likewise not accompanied by an 'alternative step-up

mechanism to increase the remuneration of the State' for the purposes of point 68 of the Temporary Framework. In that regard, the General Court incorrectly considered, inter alia, in paragraph 266 of the judgment under appeal, that point 70 of the Temporary Framework did not have any relevance to the case at hand. According to DLH, that point provides that the Commission must follow the general principles of the other points of the Temporary Framework and that, given that the nature of hybrid instruments varies significantly and that the Commission has broad discretion in assessing them, it must also consider the risk of hybrid instruments on a case-by-case basis.

50 In any event, the Commission was entitled to conclude, in paragraph 161 of the decision at issue, that the remuneration levels of Silent Participations I and II, the significant discount, including the effects of a higher, 'undesirable' shareholding, and the additional built-in exit incentives, reflected the risk associated with Silent Participation II after conversion into equity, and that those interconnected components of the recapitalisation measure constituted an 'alternative mechanism' for the purposes of point 68 of the Temporary Framework also with respect to Silent Participation II.

51 The Federal Republic of Germany and the Commission in essence support the arguments put forward by DLH in its second ground of appeal and submit that it should be upheld.

52 Ryanair and Condor dispute those arguments, the latter company maintaining that the second ground of appeal must be rejected as, at least in part, inadmissible on account of the fact that, contrary to what DLH claims, the Commission does not have broad discretion under the Temporary Framework and that, in any event, no complex economic assessment had to be carried out. As to the substance, this ground of appeal should, according to those parties, be dismissed as unfounded. They contend, in essence, that the findings of the judgment under appeal referred to in the present ground of appeal should be upheld since the General Court, inter alia, did not exceed the limits of the judicial review which it is required to carry out.

Findings of the Court

53 As a preliminary point, it is necessary to reject Condor's complaint that the second ground of appeal is in part inadmissible. By that ground of appeal, DLH complains, in essence, that the General Court erred in law by encroaching on the broad discretion which, in DLH's view, is enjoyed by the Commission. The issue of whether or not the Commission had such discretion and needed to carry out, in that context, complex economic assessments, falls within the substantive examination of that purported error of law, over which the Court of Justice has jurisdiction on appeal. It follows that the second ground of appeal is admissible in its entirety.

54 As to the substance, it should be observed, as regards equity instruments, that it is apparent from point 61 of the Temporary Framework that any recapitalisation measure is to include a step-up mechanism increasing the remuneration of the State, to incentivise the beneficiary to buy back the State capital injections. That mechanism may take the form of additional shares granted to the State or other mechanisms and must correspond to a minimum increase of 10% in the remuneration of the State for each of the step-up steps, four years after the equity injection, if the State has not sold at least 40% of its participation, and six years after if the State has not sold in full its participation corresponding to the equity injection. Under point 62 of the framework, the Commission may accept alternative mechanisms, provided they overall lead to a similar outcome with regard to the incentive effects on the exit of the State and to a similar overall impact on the State's remuneration.

55 As regards hybrid capital instruments, it is apparent from point 68 of the Temporary Framework that after conversion into equity, a step-up mechanism to increase the remuneration of the State must be included, to incentivise beneficiaries to buy back the State capital injections. If the equity resulting from the State's intervention is still owned by the State two years after the conversion into equity, that State is to receive a share of the beneficiary, in addition to its remaining participation resulting from the State's conversion of the hybrid capital instruments. That additional share of ownership is to be at a minimum 10% of that remaining participation. The same point states that the Commission may accept alternative step-up mechanisms to increase the remuneration of the State, provided they have the same incentive effect and a similar overall impact on the State's remuneration.

56 In that regard, it is apparent from settled case-law, referred to by the General Court in paragraphs 74 and 75 of the judgment under appeal, that, for the purpose of assessing the compatibility of aid measures with the internal market under Article 107(3) TFEU, the Commission enjoys wide discretion, the exercise of which involves complex economic and social assessments (see judgment of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 38 and the case-law cited).

57 It follows that judicial review must, in that regard, be confined to establishing that the rules of procedure and the rules relating to the duty to give reasons have been complied with, verifying that the facts relied on are accurate, and that there has been no manifest error of assessment or misuse of powers (see, to that effect, judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 78 and the case-law cited).

58 However, by adopting guidelines, such as those set out in the Temporary Framework, in order to establish the criteria on the basis of which the Commission proposes to assess the compatibility, with the internal market, of aid envisaged by the Member States, and by announcing, by publishing them, that they will henceforth apply to the cases to which they relate, that institution imposes a limit on the exercise of the discretion granted to it in that respect by, inter alia, Article 107(3)(b) TFEU, and cannot, as a general rule, depart from those guidelines, at the risk of being found to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations (see, to that effect, judgment of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraphs 39 and 40, and of 31 January 2023, *Commission* v *Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraph 90).

59 It is also apparent from the case-law of the Court of Justice that, while the Commission, in the area of State aid, is bound as a rule by the guidelines that it issues, such as the Temporary Framework, the adoption of such guidelines does not relieve the Commission of its obligation to examine the specific exceptional circumstances relied on by a Member State, in a particular case, for the purpose of requesting the direct application of Article 107(3)(b) TFEU. Accordingly, the Member States retain the right to notify the Commission of proposed State aid which does not meet the requirements established in such guidelines and it may authorise such proposed aid in exceptional circumstances (see, to that effect, judgments of 31 January 2023, *Commission* v *Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 92 and 93, and of 7 November 2024, *Ryanair* v *Commission*, C-588/22 P, EU:C:2024:935, paragraphs 59 and 60).

60 Although, in accordance with the case-law of the Court of Justice cited in paragraph 58 above, the Commission has set a limit on the exercise of its discretion by adopting the Temporary Framework, it must, nevertheless, be stated that that framework explicitly provides, in points 62 and 68, for the possibility of using, in addition to the step-up mechanisms for increasing the remuneration of the State which it details, alternatives which produce similar overall effects.

61 In the light of the criterion of overall similarity set by the Temporary Framework, an alternative mechanism cannot be required to be identical to the mechanism foreseen by the Temporary Framework, whether in its design or in its effects.

62 In addition, it follows from the case-law referred to in paragraphs 56 and 57 above that only a manifest error of assessment by the Commission as to whether an alternative mechanism leads to effects that are similar overall to those produced by the step-up mechanisms to increase the remuneration of the State detailed in points 61 and 68 of the Temporary Framework may lead to the annulment of a decision of that institution by an EU Court.

63 In such an exercise, a manifest error may be established by evidence which renders implausible the Commission's assessment of the facts in its decision. By contrast, such a plea must be rejected if, despite the evidence adduced by the applicants, the contested assessment does not appear to be vitiated by any such error (see, to that effect, judgment of 7 May 2020, *BTB Holding Investments and Duferco Participations Holding* v *Commission*, C-148/19 P, EU:C:2020:354, paragraph 72).

64 However, the European Union judicature must, inter alia, establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (judgment of 24 October 2013, *Land Burgenland and Others* v *Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682, paragraph 79 and the case-law cited).

65 In addition, the General Court, more generally, cannot substitute its own reasoning for that of the author of the contested act (see, to that effect, judgment of 28 September 2023, *Ryanair* v *Commission*, C-320/21 P, EU:C:2023:712, paragraph 117 and the case-law cited).

66 In paragraphs 267 and 268 of the judgment under appeal, the General Court held that the equity participation and Silent Participation II, at the time of their conversion into equity, were not accompanied by a step-up mechanism to increase the State's remuneration or any similar mechanism under points 62 and 68 of the Temporary Framework, the content of which is set out in paragraphs 54 and 55 above.

67 In that regard, it is apparent from paragraph 248 of the judgment under appeal that the Commission, in order to find that the overall structure of the mechanism constituted, in accordance with point 62 of the Temporary Framework, a mechanism that was comparable to a step-up mechanism to increase the remuneration of the State provided for in point 61 of that framework, relied, first, on the significant discount at which the Federal Republic of Germany had acquired the shares in DLH; second, on the fact that the presence of the State as a shareholder of DLH was undesirable for the beneficiary; third, that Silent Participations I and II had increasing coupons and that the likelihood of conversion of a part of Silent Participation II into shares increased with time, which would have caused the dilution of existing shareholdings in favour of the State; and, fourth, certain behavioural commitments, in particular the prohibition on paying dividends, which were to remain in force until the aid was redeemed in full.

68 With a view to ruling on those grounds, the General Court concluded, first, in paragraphs 253 to 257 of the judgment under appeal, that the discount of 71.9% in the share price, which, according to the decision at issue, made it possible to offer remuneration that was higher than that which the Federal Republic of Germany could have received, without any such discount, solely by applying a step-up mechanism, as provided for in point 61 of the Temporary Framework, did not have a sufficiently close connection with the subject matter and purpose of the step-up mechanism for increasing the remuneration for the State. Second, the General Court, in paragraph 258 of the judgment under appeal, rejected the argument that the shareholding was 'undesirable' as being a subjective and irrelevant factor. Third, in paragraphs 260 and 262 of the judgment under appeal, the General Court held that the fact that the interest rate providing remuneration for Silent Participations I and II increased over time and that DLH would be subject to behavioural commitments came within other requirements of the Temporary Framework. As regards Silent Participation II, the General Court, in paragraph 265 of the judgment under appeal, rejected the Commission's arguments for the same reasons and held, in paragraph 266 of that judgment, that the Commission had not demonstrated to a sufficient degree that the measure at issue was accompanied by an alternative mechanism that was capable of producing effects comparable to a step-up mechanism to increase the remuneration of the State.

69 The General Court thus rejected each of the arguments put forward by the Commission in the decision at issue, first, because of their lack of connection with the step-up mechanism envisaged and, second, because they related to separate requirements under the Temporary Framework.

70 However, the fact that some of the factors taken into consideration by the Commission under points 62 and 68 of the Temporary Framework might also fall within the scope of other requirements laid down by that framework does not appear, in and of itself, to make them completely irrelevant. It cannot be ruled out that one part of a measure that exactly meets one of the requirements of the Temporary Framework may also contribute to achieving the specific objective of another requirement laid down by that framework.

71 In that context, the General Court, while finding, in paragraphs 251 and 252 of the judgment under appeal, a failure to put in place either a step-up mechanism to increase the remuneration of the State or alternative mechanisms under points 62 and 68 of the Temporary Framework, did not establish that the Commission was manifestly mistaken as to the effectiveness of the various factors on which that institution relied in the decision at issue, such that its analysis of the overall similarity of the effects produced by the alternative mechanism examined was rendered implausible.

72 More specifically, it is not apparent from paragraphs 253 to 257 of the judgment under appeal that the conclusion that the significant discount at which the Federal Republic of Germany had acquired DLH's shares could contribute to producing incentive effects on the exit of the State from the capital was implausible.

73 Nor is it apparent from paragraphs 258 to 269 of the judgment under appeal that the progressive increase in the interest rates providing remuneration for Silent Participations I and II, the increase in the likelihood of a conversion of part of Silent Participation II into equity, or the fact that DLH would be subject to behavioural commitments, would be manifestly incapable of producing effects that are overall comparable to the mechanisms described in point 61 and in the first and second sentences of point 68 of the Temporary Framework.

74 In addition, the General Court failed to take into consideration the cumulative effects of the various factors taken into account by the Commission to establish the existence of an alternative mechanism to that of the step-up to increase the remuneration of the State, in accordance with points 62 and 68 of the Temporary Framework, whereas it was precisely the combined effects of the various factors referred to in the preceding two paragraphs that that institution relied on.

75 In those circumstances, the General Court failed to demonstrate that the Commission had made a manifest error of assessment in finding that the measure at issue, both with respect to the equity participation and Silent Participation II, was accompanied by alternative mechanisms meeting the requirement of having an overall similarity with a step-up mechanism increasing the remuneration of the State, and it therefore vitiated its judgment by an error of law.

76 It follows from the foregoing that both parts of the second ground of appeal must be upheld.

The third ground of appeal

Arguments of the parties

77 By its third ground of appeal, DLH complains that the General Court erred in law when it found, in paragraphs 272 to 288 of the judgment under appeal, that the Commission had infringed point 67 of the Temporary Framework by taking the view that part of Silent Participation II, namely Silent Participation II-A, could be converted at a fixed price of EUR 2.56 per share and that another part, Silent participation II-B, could be converted at the trading price of the shares at the time of conversion, minus 10% or 5.25%, depending on the triggering event.

78 In that regard, it argues that the General Court disregarded the fact that the Commission may, under point 59 of the Temporary Framework, accept ‘an alternative to the remuneration methodologies set out below’ and, thereby, also to the option in point 67 of that framework. Since a ‘theoretical ex rights price’ (‘TERP’), that is to say, the theoretical market price of the shares after a new rights issue, could not be calculated in the present case, a different solution was necessary. According to DLH, in order to motivate the capital market to exercise its subscription rights, the issuer grants a discount to the market price for the new shares which can be subscribed to in the parallel rights issuance. The TERP is then calculated on the basis of the market price after dilution by the rights issue. In connection with a conversion right as foreseen for Silent Participation II, however, no additional (discounted) parallel rights issuance to the market existed that could be used as a reference point to calculate the issue price of the conversion rights.

79 DLH states that, given the impossibility of calculating a TERP, the Federal Republic of Germany proposed to refer, first, to the minimum issuance price of EUR 2.56 applicable to DLH for the conversion of Silent Participation II-A and, second, to DLH’s market price, using a discount of 5.25% or 10%, depending on the trigger event, for the conversion of Silent Participation II-B. According to DLH, having regard to the circumstances of the case, it could be expected, as found in the decision at issue, that both conversion prices would be in line with the requirement laid down in point 67 of the Temporary Framework.

80 A reference to a TERP was therefore not possible, contrary to what was considered by the General Court in 276 to 279 of the judgment under appeal, such that the Commission had been right to accept an alternative remuneration method under point 59 of the Temporary Framework that led to the same outcome as if a TERP could have been taken into consideration.

81 DLH submits that that conclusion, contrary to what the General Court held in paragraphs 280 to 285 of the judgment under appeal, cannot be called into question by the fact that the decision at issue required, in paragraph 158, that the Federal Republic of Germany seek the agreement of the Commission on the exercise of the conversion option if the latter was not conducted at 5% or more below TERP. The risk of non-compliance was merely theoretical and authorisation by the Commission was intended to ensure maximum compliance. Criticising paragraph 283 of the judgment under appeal, DLH submits, in particular, that the objective was not to have a ‘derogation’ from point 67 of the Temporary Framework or to postpone a decision thereon, but to have an additional layer of security and to ensure that the Federal Republic of Germany complied with its obligation, since it related to a conversion that naturally takes place after recapitalisation (*ex post*).

82 The Federal Republic of Germany and the Commission in essence support the arguments put forward by DLH in its third ground of appeal and submit that that ground should be upheld.

83 Ryanair and Condor dispute that line of argument and submit that the third ground of appeal should be rejected as at least in part inadmissible on account of the fact that it seeks to question findings of fact made by the General Court. In any event, according to those parties, that ground must be rejected as unfounded. They contend, in essence, that the grounds of the judgment under appeal referred to in this ground of appeal should be upheld since the General Court, inter alia, did not exceed the limits of the judicial review which it is required to carry out.

Findings of the Court

84 It should be observed, as regards the remuneration of hybrid capital instruments, that, under point 67 of the Temporary Framework, the conversion of such instruments into equity is to be conducted at 5% or more below the TERP at the time of the conversion.

85 In paragraph 275 of the judgment under appeal, the General Court first observed that the Commission had found in the decision at issue that part of Silent Participation II, namely Silent Participation II-A, could be converted into shares at a fixed price of EUR 2.56 per share, while another part of Silent Participation II, namely Silent Participation II-B, could be converted at the trading price of the shares at the time of conversion, minus 10% or 5.25%, depending on the triggering event. The decision at issue also referred to the fact that ‘all those conversion prices can be expected to be in line with the requirement laid down in point 67 of the Temporary Framework’, but that ‘there may exist a market share price below which [that requirement] … would not be met’, and that, in that case, the Federal Republic of Germany had undertaken to seek the Commission’s authorisation before exercising its right of conversion.

86 In paragraphs 276 to 278 of the judgment under appeal, the General Court then held that the price of the shares at the time of conversion was not determined on the basis of the TERP, whether as regards Silent Participation II-A, since the fixed price per share applied did not correspond to the method set out in point 67 of the Temporary Framework, or as regards Silent Participation II-B, for which the price was based on the trading price at the time of conversion.

87 Lastly, the General Court found that the Commission had not justified the use of an alternative method of calculation and that, by providing for an *ex post* authorisation scheme in the event of a non-compliant price, the Commission had merely postponed its decision, contrary to that point 67.

88 In that context, it should be observed that under point 59 of the Temporary Framework, Member States may, as an alternative to the remuneration methodologies set out in points 60 to 70 thereof, notify schemes or individual measures where the methodology for remunerating the State is adapted in accordance with the features and seniority of the capital instrument, provided they overall lead to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration.

89 Accordingly, DLH is correct when it argues that the Commission was entitled to refer to an alternative mechanism to that described in point 67 of the Temporary Framework, without having to rely on a specific reason or exceptional circumstance for that purpose. However, such an alternative mechanism will comply with the requirements of the Temporary Framework only in so far as it produces a similar overall outcome as the mechanism referred to in point 67.

90 However, it is apparent from paragraphs 277, 278 and 280 to 286 of the judgment under appeal that the General Court found that the alternative method of calculation set out in paragraph 158 of the decision at issue could lead to a price being determined that did not correspond to the prices that would result from the application of the method set out in point 67 of the Temporary Framework. In order to come to that conclusion, the General Court, inter alia, relied on the actual content of the decision at issue, referred to in paragraph 85 above.

91 The finding of the General Court that the application of that alternative method leads to a different outcome from that of applying the method set out in point 67 of the Temporary Framework is not contested in the present appeal.

92 In that context, the appellant's argument, based on the fact that a TERP could not be calculated in the present case, cannot succeed.

93 Indeed, other than the fact that it contradicts the decision at issue, which explicitly provides for a comparison between the outcome under the alternative method of calculation and that produced by use of the TERP method, that line of argument ultimately seeks, as Ryanair and Condor claim, to have the Court of Justice itself make findings of fact, without any claim being made that the General Court distorted the evidence presented to it.

94 However, it is clear from established case-law that, in an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. The jurisdiction of the Court of Justice to review the findings of fact by the General Court extends, inter alia, to the distortion of the facts, namely the substantive inaccuracy of those findings as apparent from the documents in the file, distortion of the evidence, the legal characterisation of the evidence, and whether the rules relating to the burden of proof and the taking of evidence have been observed (judgment of 11 September 2025, *Austria* v *Commission (Paks II nuclear power station)*, C-59/23 P, EU:C:2025:686, paragraph 58 and the case-law cited).

95 The third ground of appeal is therefore inadmissible in so far as it asks the Court of Justice to find that the judgment under appeal is vitiated by an error on the ground that it failed to consider the circumstance that a TERP could not be calculated in the present case.

96 Furthermore, contrary to what is maintained by the Commission, the obligation for the Federal Republic of Germany to seek the Commission's authorisation if the conversion price of the hybrid capital instruments was not in line with the requirement referred to in point 67 of the Temporary Framework, as foreseen in paragraph 158 of the decision at issue, does not suffice to bring that paragraph into line with the requirement in question.

97 Indeed, as the General Court found in paragraph 284 of the judgment under appeal, the Federal Republic of Germany did not commit itself to ensuring that the price would in any event be brought into line with the requirement set out in point 67 of the Temporary Framework, but only to obtain the Commission's authorisation as to the price level established. There is no mention of the criteria that the Commission would apply if it had to examine a planned conversion of hybrid capital instruments by the Federal Republic of Germany in a situation where the requirements of point 67 of the Temporary Framework were not met. It thus follows that there is no guarantee of ensuring compliance with those requirements.

98 It must also be held, as observed by the General Court in paragraphs 280 to 286 of the judgment under appeal, that State aid is subject to a system of prior authorisation under Article 108(3) TFEU, such that an aid measure must be declared compatible with the internal market before it is implemented. Accordingly, the Commission cannot postpone, until after it has adopted its decision on the compatibility of a State aid measure, the assessment of an aspect that is directly linked to that compatibility review. The Commission was in fact required to adopt a position, in the decision at issue, on the methods for determining the price if the hybrid instruments at issue were converted and it could not confine itself to accepting a calculation method that did not in all circumstances ensure compliance with the requirement set out in point 67 of the Temporary Framework.

99 In addition, although the Commission maintains that paragraph 158 of the decision at issue only authorises the measure at issue if the conversion price was ultimately in line with point 67 of the Temporary Framework, it must be found that there is no support for such a claim in that paragraph, which foresees an *ex post* review without any definition of the parameters of that review.

100 It follows that the third ground of appeal must be rejected as in part inadmissible and in part unfounded.

The fourth ground of appeal

Arguments of the parties

101 By its fourth ground of appeal, which has two parts, DLH complains that the General Court erred in law and overstepped the limits of its judicial review by holding, in paragraphs 373 to 412 of the judgment under appeal, that the Commission had made a manifest error of assessment when determining whether DLH held SMP at the relevant airports.

102 By the first part of the fourth ground of appeal, DLH submits, in essence, that the General Court erred in law and overstepped the limits of its judicial review by holding, in paragraphs 373 to 387 of the judgment under appeal, that the Commission had made a manifest error of assessment

because it had only taken account of criteria that related, in essence, to barriers to entry, the extension of new competitors and 'airport capacity', without giving consideration to all the pertinent factors in the present case for assessing whether DLH held SMP at the relevant airports.

103 In that regard, DLH submits that identifying SMP is subject to a complex economic assessment in respect of which the Commission enjoys broad discretion and that the General Court overstepped the limits of the judicial review it could exercise with regard to the decision which the Commission adopted in that context. More specifically, the General Court's reasoning in paragraph 385 of the judgment under appeal is overly vague and refers only briefly to the potential relevance of the beneficiary's market shares 'in terms of frequencies (the number of flights) and seats offered to and from the relevant airports' in order to conclude that the Commission had not taken all the relevant factors into consideration. In that regard, according to DLH, the Commission was right not to take that latter factor into account. The criteria applied were sufficient in the present case to analyse accurately the effects of the measure at issue in accordance with point 72 of the Temporary Framework and are consistent with the analytical framework applied by the Commission in merger cases involving airlines. Furthermore, the potential competitive effects of the measure at issue did not relate to any specific route, but rather to DLH's ability to keep or even expand its slot holdings at the relevant airports. The compatibility of the aid thus had to be assessed in relation to the competitive situation as a whole.

104 In addition, DLH submits that the finding of the General Court in paragraph 379 of the judgment under appeal fails to show that consideration of market shares in terms of frequencies and seats offered would have been more meaningful than the criteria applied by the Commission in order to assess SMP. DLH thus argues that the Commission was not required to complement that analysis by market share estimates based on frequencies or seats offered or by considering all the other 'relevant factors'.

105 By the second part of the fourth ground of appeal, DLH submits, in essence, that the General Court erred in law and exceeded the limits of its judicial review by holding, in paragraphs 388 to 412 of the judgment under appeal, that the Commission had made a manifest error of assessment in finding that DLH did not hold SMP at Düsseldorf and Vienna airports.

106 In that regard, DLH argues that, since the Commission enjoys broad discretion in analysing market data for assessing SMP, the General Court overstepped the limits of its judicial review by substituting its own analysis of that data for that of the Commission. More specifically, the General Court's reasoning in paragraph 411 of the judgment under appeal is overly vague in that it states that the Commission was wrong to find that DLH did not have SMP at Düsseldorf and Vienna airports 'at least during the IATA 2019 summer season'. Such reasoning is insufficient to find a manifest error of assessment on the part of the Commission inasmuch as other time periods are concerned, such as the IATA 2019/2020 winter season.

107 According to DLH, the Commission was right to find that it did not hold SMP at Düsseldorf and Vienna airports. DLH states that the criteria for assessing SMP with respect to those two airports differ materially from those concerning Frankfurt and Munich airports and do indeed show that DLH did not have SMP at Düsseldorf and Vienna airports. Criticising, in that regard, inter alia, paragraph 397 of the judgment under appeal, DLH presents data and figures relating, in particular, to its slot holdings at Düsseldorf, Vienna, Frankfurt and Munich airports in order to show that the General Court erred in holding that the Commission was not entitled to find that DLH did not have SMP at Düsseldorf and Vienna airports.

108 The Federal Republic of Germany and the Commission in essence support the arguments put forward by DLH in its fourth ground of appeal and submit that that ground should be upheld.

109 Ryanair and Condor dispute those arguments and submit that the second part of the fourth ground of appeal must be rejected as at least partially inadmissible because, by that part, DLH is seeking to call into question findings of fact made by the General Court. Ryanair also submits that DLH's arguments relating to an inadequate statement of reasons for the judgment under appeal and those based on the case-law and the Commission's decision-making practice are inadmissible. In any event, according to those parties, the present ground must be rejected as unfounded. They contend, in essence, that the grounds of the judgment under appeal referred to in the present ground of appeal should be upheld since the General Court, inter alia, did not exceed the limits of the judicial review which it is required to carry out.

Findings of the Court

110 As regards the first part of the fourth ground of appeal, it should be observed that, in paragraphs 373 to 387 of the judgment under appeal, the General Court analysed the criteria used by the Commission to assess whether DLH held SMP at the relevant airports.

111 The General Court first observed, in paragraph 373 of the judgment under appeal, that the Commission had stated in paragraph 179 of the decision at issue that it would refer for that purpose to three criteria: first, the slot holdings of the group to which DLH belongs at those airports, defined, in paragraph 376 of that judgment, as the ratio between the number of slots held by an air carrier (or the air carriers that are part of the same group) at an airport and the total available slots at that airport; second, the 'level of congestion' at those airports assessed, as is apparent, in essence, from that latter paragraph of the judgment under appeal, in the light of the proportion of slots allocated to all airlines at the airport concerned in relation to the total capacity of the airport in terms of slots; and, third, the number of slots held by the beneficiary's competitors. According to the General Court, those criteria thus primarily related to 'airport capacity' and access to infrastructure.

112 However, the General Court held in paragraph 378 of the judgment under appeal that other factors, relating to the market shares held by the beneficiary and its competitors on the market for passenger air transport services, were relevant for the purposes of assessing the existence of SMP. In that regard, the General Court, inter alia, stated, in paragraph 379 of that judgment, that, first, because of the different sizes of the aircraft operated by air carriers in the slots assigned to them, the number of seats they offered could vary considerably within a given slot and, second, air carriers could operate a different number of flights during the same slot. The information provided by those additional criteria made it possible to assess the size of the market shares of the air carriers concerned. In the case at hand, the General Court found in paragraph 380 of the judgment under appeal that the market shares of DLH, expressed in terms of frequencies (the number of flights) and seats offered to and from the relevant airports, exceeded, sometimes considerably, the share of slots that it held, as set out in the decision at issue.

113 The General Court thus concluded, in paragraph 386 of the judgment under appeal, that, given the importance of market shares for determining the existence of SMP, as referred to in paragraph 383 of the judgment under appeal, the Commission, by failing to take that aspect into consideration, had not taken all the relevant factors into account.

114 In that regard, it should be observed, first, that it is apparent from the definition of the concept of ‘slot’ in Article 2(a) of Regulation (EEC) No 95/93, as amended by Regulation No 793/2004, that that term refers to ‘the permission given by a coordinator … to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator’.

115 That definition thus means, in substance, that a slot is the right to operate a flight. Accordingly, the Commission was correct when it established a direct link in the decision at issue between the number of slots held by the beneficiary of the measure at issue and the number of flights that it could organise, whereas the General Court, by finding in paragraph 379 of the judgment under appeal that the holding of a single slot meant that it was possible to organise several flights, erred in law in its interpretation of the concept of ‘slots’. It follows that, contrary to what was held by the General Court, the inclusion of the criterion of the frequency of flights does not appear to be essential in order to be able to assess the extent to which an operator may compete effectively with DLH at a particular airport.

116 Second, as regards the criteria based on frequency and the number of seats offered, which the General Court referred to in paragraph 380 of the judgment under appeal and which, in its view, should have been taken into account by the Commission, while it cannot be ruled out that those criteria may contribute to assessing the capacity of an air carrier to provide services from a particular airport, that fact is not by itself capable of demonstrating that the Commission made a manifest error of assessment, for the purposes of the case-law referred to in paragraphs 56 and 57 above, since that capacity, which the Commission considered to be of decisive importance for assessing SMP at an airport, may also be determined on the basis of an equivalent criterion, such as the distribution of slots between operators.

117 In those circumstances, where the General Court has failed to establish to the requisite legal standard that the criterion chosen by the Commission, namely the distribution of slots, was manifestly incapable of allowing for a correct assessment of that capacity in the SMP evaluation and rendered the analysis by that institution implausible, it erred in criticising the Commission, in paragraphs 380 and 382 of the judgment under appeal, for having failed to assess, in the decision at issue, an air carrier’s capacity to provide its services on the basis of a criterion linked to frequency and the number of seats offered, namely a criterion that was different from the one applied by the Commission in that decision.

118 Third, the General Court likewise failed to demonstrate, in paragraphs 373 to 387 of the judgment under appeal, that the Commission could not justifiably consider that the level of congestion at an airport and the distribution of slots between the various operators active in departures from that airport constituted appropriate parameters for determining the degree to which an operator uses an airport and an operator’s capacity to organise more flights from that airport during the relevant period. Accordingly, the General Court failed to establish that the Commission could not rely on those various parameters to assess the level of competition, both actual and potential, which DLH faced during that period.

119 Accordingly, unlike what was found by the General Court in paragraph 386 of the judgment under appeal, it failed to establish to the requisite legal standard, in accordance with the case-law of the Court of Justice referred to in paragraphs 56 to 64 above, that the Commission had committed a manifest error of assessment by basing its SMP analysis on the criteria referred to in

paragraph 111 above and by not including market shares, expressed in terms of frequency and seats offered, in its assessment. It thus follows that the first part of the fourth ground of appeal must be upheld.

120 As regards the second part of the fourth ground of appeal, it should be observed, with respect to its admissibility, first, that infringement by the General Court of its obligation to state reasons and the limits of its judicial review are points of law over which the Court of Justice has jurisdiction at the appeal stage (judgments of 7 January 2004, *Aalborg Portland and Others* v *Commission*, C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P, EU:C:2004:6, paragraph 47, and of 26 May 2016, *Rose Vision* v *Commission*, C-224/15 P, EU:C:2016:358, paragraph 26 and the case-law cited). The question of whether DLH's arguments, as regards breach of the duty to state reasons, are sufficiently substantiated or, as regards infringement of the limits of judicial review, conflict with the case-law or the Commission's decision-making practice, is one that goes to the substance of the arguments made and can have no bearing on admissibility.

121 Second, given that the Court of Justice, as observed in paragraph 94 above, has no jurisdiction to establish the facts, it must be observed that, to the extent that DLH seeks to have the Court of Justice verify, on the basis of information which DLH has submitted to it, that the Commission was right to find that DLH did not hold SMP at Düsseldorf and Vienna airports, or that the General Court erred in its findings of fact, the second part of the fourth ground of appeal is inadmissible since DLH has not pleaded any distortion of the facts by the General Court.

122 As to the substance, it should be observed that the General Court, after holding, in paragraph 410 of the judgment under appeal, that the Commission had not taken into account all the relevant criteria and had thus committed a manifest error of assessment, added, in paragraph 411 thereof, that in any event the Commission could not properly find, on the sole basis of the criteria which it had applied, that the Lufthansa Group did not hold SMP at Düsseldorf and Vienna airports, at least during the IATA 2019 summer season.

123 In order to reach that conclusion with respect to Düsseldorf airport, the General Court found, first, in paragraph 397 of the judgment under appeal, that the Lufthansa Group's average slot holding at that airport during the IATA summer 2019 season, namely between 40 and 50%, exceeded the threshold of 40% which should have been a preliminary indication to be taken into account to establish the existence of SMP. The General Court then found in paragraph 398 of the judgment under appeal that the average congestion rate at that airport during the IATA 2019 summer season was very high, namely between 80 and 90%, rising to between 90 and 100% during peak hours, while a level higher than 60% was already problematic. Lastly, the General Court, in paragraph 399 of the judgment under appeal, highlighted the fact that competition among operators at that airport was weak and supported that finding by giving the number of aircraft possessed by each operator. The General Court thus deduced, in paragraph 401 of the judgment under appeal, that the Commission could not properly find on the basis of those criteria alone that the Lufthansa Group did not hold SMP at Düsseldorf Airport, at least during the IATA 2019 summer season.

124 Based on reasons that were similar, *mutatis mutandis*, to those referred to in the preceding paragraph, the General Court deduced, in paragraph 408 of the judgment under appeal, that the Commission could not properly find that the Lufthansa Group did not hold SMP at Vienna airport, at least during the IATA summer 2019 season.

125 In so doing, the General Court failed to have regard to the reasons given in paragraphs 203, 204, 211 and 212 of the decision at issue. However, those reasons explained why the Commission had interpreted the data available to it as failing to establish that Lufthansa Group held SMP at Düsseldorf and Vienna airports. As regards Düsseldorf airport, the Commission had considered, inter alia, that DLH’s highest slot holding did not exceed 55 to 65% for any hourly band, such that DLH’s competitors could build up a substantial slot portfolio by using slots that had not been allocated to the Lufthansa Group; in terms of the size of the fleet deployed, it found that DLH’s competitors were in a better position in Düsseldorf than in Frankfurt or Munich. As regards Vienna airport, the Commission had also relied on the fact that DLH’s highest slot holding did not exceed 50 to 60% for any hourly band, that slots were still available, that two relatively powerful competitors were based there, and that DLH’s competitors could build up a substantial slot portfolio by using those that had not been allocated to the Lufthansa Group. Accordingly, the Commission had found that despite roughly similar levels of congestion at those four airports, DLH’s slot holding in Frankfurt and Munich was significantly higher than in Düsseldorf and Vienna and that, conversely, DLH’s competitors were more powerful in Düsseldorf and Vienna than in Frankfurt and Munich.

126 Nevertheless, the General Court, using the same data as the Commission, carried out a new analysis of those data in paragraphs 396 to 408 of the judgment under appeal and, based on an overall assessment thereof, ultimately reached a different conclusion from that of the Commission, without, however, calling into question the latter’s findings in the decision at issue.

127 As a result, the General Court did not confine itself to reviewing whether the Commission had committed a manifest error of assessment, in accordance with the case-law referred to in paragraphs 56 to 64 above, but substituted its own assessment for that of the Commission in a situation, however, where that institution enjoys broad discretion.

128 The second part of the fourth ground of appeal must therefore be upheld, as must, consequently, the fourth ground of appeal in its entirety.

The fifth ground of appeal

Arguments of the parties

129 By its fifth ground of appeal, DLH complains that the General Court erred in law in finding, in paragraphs 467 to 480 of the judgment under appeal, that the Commission had made a manifest error of assessment by excluding certain competitors already based at Frankfurt and Munich airports from the first stage of the slot divestiture procedure.

130 In that regard, DLH submits that while the General Court acknowledged that the Commission had broad discretion to assess whether the commitments entered into were sufficient, it disregarded its own case-law arising from the judgment of 13 May 2015, *Niki Luftfahrt* v *Commission* (T-162/10, EU:T:2015:283, paragraph 295), according to which, the fact that other commitments might also have been accepted, or might even have been more favourable to competition, cannot justify annulment of that decision in so far as the Commission was reasonably entitled to conclude that the commitments set out in the decision served to dispel the serious doubts. Accordingly, the General Court interfered with the Commission’s discretion by rejecting a commitment on the ground, in its view, that a different commitment would have been more beneficial for competition, thus substituting its own assessment for that of the Commission.

131 DLH states that, as the General Court noted in paragraph 421 of the judgment under appeal, the potential competitive effects of State aid are more indirect than those of mergers, since the beneficiary does not acquire a competitor and thereby remove a competitive constraint, but may utilise the additional public resources it obtains to maintain or reinforce its market position. Under the Temporary Framework, commitments were required to address that risk at the airports where DLH held SMP.

132 Contrary to what the General Court found in paragraph 472 of the judgment under appeal, the Commission specifically stated in paragraphs 226 and 227 of the decision at issue that limiting the slot divestiture procedure to new entrants was beneficial since it would allow structural competition with the Lufthansa Group. In particular, the Commission had addressed the competitive concerns attached to the recapitalisation aid, based on its previous experience in merger and antitrust cases in the aviation sector in order to find that the commitment by the Lufthansa Group to transfer part of its business, to allow competitors to set up bases, was the most effective measure to prevent undue distortions of competition.

133 However, the reasoning of the General Court in paragraphs 472 to 477 of the judgment under appeal completely disregarded the fact that the Commission, when having to choose between two different commitment structures, has broad discretion to apply commitments of a narrower scope as long as it may reasonably conclude that the commitments offered are sufficient to address the risks associated, in the present case, with DLH having SMP at Frankfurt and Munich airports.

134 Similarly, when analysing the structure of the market at Frankfurt and Munich airports in paragraphs 473 to 476 of the judgment under appeal, and by referring to an alternative structure that did not exclude existing competitors from the slot divestiture procedure, the General Court substituted its own assessment for that of the Commission. However, that again involved a complex economic analysis.

135 Furthermore, according to DLH, given what was found, in essence, in paragraphs 452 and 463 of the judgment under appeal, the General Court contradicted its own reasoning in holding, in paragraphs 473 to 476 of the judgment under appeal, that carriers with a base at an airport would be in a better position to maintain effective competition.

136 The Federal Republic of Germany and the Commission support, in essence, the arguments put forward by DLH in its fifth ground of appeal and argue that that ground of appeal should be upheld.

137 Ryanair and Condor dispute that line of argument and submit that the fifth ground of appeal should be rejected. They contend, in essence, that the grounds of the judgment under appeal referred to in the present ground should be upheld since the General Court, inter alia, did not exceed the limits of the judicial review which it is required to carry out.

Findings of the Court

138 As a preliminary point, it should be observed that, in accordance with point 72 of the Temporary Framework, if the beneficiary of a recapitalisation measure has SMP on a market, the Member State must propose additional measures to preserve effective competition on that market. In that regard, it is apparent from paragraphs 71 and 72 of the decision at issue that the Federal Republic of Germany committed to require the beneficiary of the recapitalisation measure at issue to divest

a certain number of slots per day and additional assets at Frankfurt and Munich airports. It was then planned that if, after three seasons, the divested slots had not been acquired by a new entrant, they would be made available to other competing carriers that already had a base at those airports.

139 The General Court held in paragraph 479 of the judgment under appeal that the Commission had failed to examine all the relevant factors relating to the commitments of the Federal Republic of Germany to preserve effective competition on the market concerned, assessed in the light of the structure and particular characteristics of the markets at issue. More specifically, the General Court held, in paragraphs 472 to 478 of the judgment under appeal, that it was incumbent on the Commission to examine whether the preference given to new entrants and the exclusion of existing competitors during the first stage of the slot allocation procedure was appropriate and necessary in order to preserve effective competition.

140 In support of that finding, the General Court, inter alia, indicated in paragraphs 474 to 477 of the judgment under appeal that other measures, consisting, in particular, of the application of other conditions than those foreseen in the commitments of the Federal Republic of Germany for divesting the slots at issue to already established competitors, would be able better to preserve effective competition.

141 In that regard, it should be observed that it is apparent from the case-law of the Court of Justice referred to in paragraphs 56 to 64 above that the Commission has broad discretion to determine whether additional measures proposed by Member States are able to meet the requirements arising from point 72 of the Temporary Framework.

142 Furthermore, given the actual wording of point 72 and the principles governing the oversight of State aid, the Commission is not required, when making its assessment, to determine whether the proposed additional measures are the most effective possible measures to promote competition on the relevant markets, but only whether those measures are sufficient to preserve effective competition on those markets.

143 DLH is thus justified in arguing that the fact that measures other than those referred to in the decision at issue would be likely to promote greater competition on the markets at issue could not, on any view, render that decision unlawful.

144 It follows that the General Court could not properly conclude that there was a manifest error of assessment in the decision at issue by basing its finding on the fact that the Commission had not examined the potential positive effects of a slot divestiture procedure which did not exclude existing competitors, even though such a mechanism would have favoured greater competition, without finding, within the limits of the review it is required to make, that the commitments referred to in the decision at issue were insufficient to enable the preservation of effective competition on the markets at issue.

145 The fifth ground of appeal must therefore be upheld.

The sixth ground of appeal

Arguments of the parties

146 By its sixth ground of appeal, DLH complains that the General Court erred in law, in particular in paragraph 501 of the judgment under appeal, by holding that the Commission had failed to fulfil its obligation to state reasons as regards its finding that the divestiture had to be carried out in return for remuneration and did not affect the attractiveness of the commitments related to those slots.

147 DLH observes that it is apparent from the case-law of the Court of Justice that a decision such as the one at issue, taken within a short period of time, must simply set out the reasons for which the Commission takes the view that the measure under examination does not appear to present serious difficulties and that it is sufficient for it to set out the facts and the legal considerations having decisive importance in the structure of the decision concerned. The General Court therefore erred in law in holding that the Commission had failed to fulfil its obligation to state reasons.

148 DLH also submits that the decision at issue, in the light of the relevant case-law of the Court of Justice, contained reasoning that met the requisite legal standard, since, first, in view of the number of arguments put forward on every detail related to the slot commitments, which were examined by the General Court in paragraphs 413 to 493 of the judgment under appeal, the applicants at first instance were evidently able to challenge the substance of the decision at issue. Second, the specific design of each slot divestiture differs and involves extremely technical assessments, for which a specific additional statement of reasons was not required.

149 The Federal Republic of Germany and the Commission in essence support the arguments put forward by DLH in its sixth ground of appeal and argue that that ground of appeal should be upheld.

150 Ryanair and Condor dispute that line of argument and submit that the sixth ground of appeal should be rejected. They contend, in essence, that the grounds of the judgment under appeal referred to in the present ground should be upheld since the General Court, inter alia, did not exceed the limits of the judicial review which it is required to carry out.

Findings of the Court

151 It should be observed that, according to settled case-law, the statement of reasons required by the second paragraph of Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measures in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular, the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to specify all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of the second paragraph of Article 296 TFEU must be assessed

with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 23 January 2025, *Neos* v *Ryanair and Commission*, C-490/23 P, EU:C:2025:32, paragraph 34 and the case-law cited).

152 Specifically, as regards a decision under Article 108(3) TFEU not to raise objections in respect of an aid measure, as in the present case, the Court has held previously that such a decision, which is taken within a short period of time, must simply set out the reasons why the Commission takes the view that it is not faced with serious difficulties in assessing the compatibility of the aid at issue with the internal market, and that even a succinct statement of reasons for that decision must be regarded as being sufficient for the purpose of satisfying the requirement to state adequate reasons laid down in the second paragraph of Article 296 TFEU, provided that it discloses in a clear and unequivocal fashion the reasons why the Commission considered that it was not faced with serious difficulties, the question whether the reasoning is well founded being a separate matter (see, by analogy, judgment of 23 January 2025, *Neos* v *Ryanair and Commission*, C-490/23 P, EU:C:2025:32, paragraph 35 and the case-law cited).

153 It is in the light of those criteria that it is necessary to examine whether the General Court erred in law in deciding that the decision at issue was vitiated by an infringement of the Commission's obligation to state reasons under the second paragraph of Article 296 TFEU.

154 In the present case, the General Court held in paragraphs 498 to 502 of the judgment under appeal that the Commission should have set out in detail, in the decision at issue, the reasons which had led it to find that the slot divestiture at issue should be carried out in return for remuneration and not free of charge, since the choice of a divestiture for remuneration could reduce the attractiveness of the slots on offer and, thus, the effectiveness of the related commitments.

155 In that regard, by criticising the Commission in paragraph 501 of the judgment under appeal for failing to indicate in the decision at issue why preference was not given to divestiture of the slots at issue free of charge, rather than to divestiture in return for remuneration, the General Court imposed a requirement on the Commission to not only provide a positive justification for the validity of divesting the slots for remuneration, as endorsed by the decision at issue, but also to justify in a negative sense why the contrary option, namely a divestiture free of charge, was not relevant.

156 However, since the Commission is solely required under the Temporary Framework, as is apparent from paragraph 142 above, to assess whether the additional measures proposed are sufficient to preserve effective competition on the markets in question, the Commission cannot be expected, as part of its obligation to state reasons, to examine whether other measures are likely better to promote competition on those markets and to provide reasons why it did not require the implementation of those other measures.

157 It follows from the foregoing that the General Court erred in law in holding, in paragraph 501 of the judgment under appeal, that the Commission had failed to fulfil its obligation to state reasons since it had not explained why the divestiture of the slots at issue had to be carried out for remuneration and not free of charge.

158 It follows that the sixth ground of appeal must be upheld.

Conclusion

159 As the General Court correctly held in paragraph 505 of the judgment under appeal, which has not been complained of in the present appeal, each of the errors allegedly vitiating the decision, as set out in paragraph 504 of that judgment, was capable, in itself, of justifying the annulment of the decision at issue. Accordingly, the judgment under appeal may only be set aside if it were shown that the General Court erred in finding each of those errors. The present appeal may therefore be upheld and the judgment under appeal set aside only if all of the grounds of appeal put forward by the appellant are well founded.

160 While, in view of all the foregoing findings, the first, second and fourth to sixth grounds of appeal must be upheld, the third ground of appeal, by contrast, must be rejected. Consequently, the appeal must be dismissed in its entirety.

Costs

161 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

162 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

163 Since Ryanair and Condor have applied for costs and DLH has been unsuccessful, DLH must be ordered to bear its own costs and to pay those incurred by Ryanair and Condor.

164 Furthermore, since the Federal Republic of Germany and the Commission have been unsuccessful, but Ryanair and Condor have not applied for costs in their respect, the Federal Republic of Germany and the Commission must be ordered to bear their own costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Deutsche Lufthansa AG to bear its own costs and to pay those incurred by Ryanair DAC and Condor Flugdienst GmbH;**

3. **Orders the Federal Republic of Germany and the European Commission to bear their own costs.**

Lycourgos	Spineanu-Matei	Rodin
Piçarra		Fenger

Delivered in open court in Luxembourg on 23 April 2026.

A. Calot Escobar Registrar	C. Lycourgos President of the Chamber